

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARCUS R. ELLINGTON,

Plaintiff, No. CIV S-04-0666 DFL KJM P

vs.

E.S. ALAMEIDA, et al.,

Defendants. ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief under 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis under 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 72-302 under 28 U.S.C. § 636(b)(1).

Plaintiff has “struck out” within the meaning of the Prison Litigation Reform Act (PLRA). For this reason, and because his original complaint did not satisfy an exception to the “three strikes” provision of the PLRA, plaintiff’s complaint was dismissed with leave to pay the required filing fee in full or to file an amended complaint. Plaintiff now has filed an amended complaint, portions of which satisfy an exception to the PLRA’s “three strikes” provision. Because plaintiff’s declaration submitted with his original complaint makes the showing required by 28 U.S.C. § 1915(a), his request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee in effect at the time of filing of

1 his action, \$150.00. 28 U.S.C. §§ 1914(a), 1915(b)(1). Plaintiff has been without funds for six  
2 months and is currently without funds. Accordingly, the court will not assess an initial partial  
3 filing fee. 28 U.S.C. § 1915(b)(1). Plaintiff is obligated to make monthly payments of twenty  
4 percent of the preceding month's income credited to plaintiff's prison trust account. These  
5 payments shall be collected and forwarded by the appropriate agency to the Clerk of the Court  
6 each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28  
7 U.S.C. § 1915(b)(2).

8 As noted above, portions of the amended complaint satisfy the "three strikes"  
9 exception of "imminent danger of serious physical injury" and state a cognizable claim for relief  
10 under 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). If the allegations of the amended complaint  
11 identified below are proven, plaintiff has a reasonable opportunity to prevail on the merits.

12 In accordance with the above, IT IS HEREBY ORDERED that:

13 1. Plaintiff's request for leave to proceed in forma pauperis is granted.  
14 2. Plaintiff is obligated to pay the statutory filing fee of \$150.00 for this action.

15 The fee shall be collected and paid in accordance with this court's order to the Director of the  
16 California Department of Corrections filed concurrently herewith.

17 3. Service is appropriate for the following defendants: Rohlfing (insofar as he is  
18 alleged to have acted as described in ¶¶ 15-17 and 36 of the amended complaint), Exum (insofar  
19 as he is alleged to have acted in ¶ 14) and Salanger (insofar as he is alleged to have acted in  
20 ¶ 38G).

21 4. The Clerk of the Court shall send plaintiff three USM-285 forms, one  
22 summons, an instruction sheet and a copy of the amended complaint filed December 13, 2004.

23 5. Within thirty days from the date of this order, plaintiff shall complete the  
24 attached Notice of Submission of Documents and submit the following documents to the court:

25 a. The completed Notice of Submission of Documents;  
26 b. One completed summons;

c. One completed USM-285 form for each defendant listed in number 3 above; and

d. Four copies of the endorsed complaint filed December 13, 2004.

6. Plaintiff need not attempt service on defendants and need not request waiver of service. Upon receipt of the above-described documents, the court will direct the United States Marshal to serve the above-named defendants under Federal Rule of Civil Procedure 4 without payment of costs.

DATED: May 17, 2005.

UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARCUS ELLINGTON,

Plaintiff, No. CIV-S-04-0666 DFL KJM P

vs.

E.S. ALAMEIDA, et al.,

NOTICE OF SUBMISSION

Defendants. OF DOCUMENTS

\_\_\_\_\_/

Plaintiff hereby submits the following documents in compliance with the court's  
order filed \_\_\_\_\_:

\_\_\_\_\_ completed summons form

\_\_\_\_\_ completed USM-285 forms

\_\_\_\_\_ copies of the \_\_\_\_\_  
Complaint/Amended Complaint

DATED:

\_\_\_\_\_  
Plaintiff